

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

In re:

**Dana Charles Archibald and
Marcia Lynn Archibald,**

Bankruptcy Case No.: 08-08352-8-ATS

Soc. Sec. Nos. xxx-xx-7830 & xxx-xx-2588
Mailing Address: 311 Homestead Park Drive, Apex, NC
27502-

Debtors.

**Dana Charles Archibald and
Marcia Lynn Archibald,**

A.P. No.: _____

Plaintiffs,

Beneficial Mortgage Co. of North Carolina,

Defendant.

COMPLAINT TO VALUE COLLATERAL

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. Section 157, and that the court has jurisdiction pursuant to 28 U.S.A. Sections 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. 506, and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by Beneficial Mortgage Co. of North Carolina.
3. The Plaintiffs are filed this bankruptcy case on November 24, 2008 seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant Beneficial Mortgage Co. of North Carolina is a corporation and/or a partnership with an office and principal place of business located at Ct Corporation System, 150 Fayetteville Street, Box 1011, Raleigh, NC 27601 and/or 577 Lamont Road, Elmhurst, IL 60126 .This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. Section 157 and 1334 and 11 U.S.C. Section 506.
5. The Plaintiffs own real property located at 311 Homestead Park Drive, Apex, NC 27502. The legal description of the property is as follows: All that certain lot or parcel of land situate in the county of Wake, State of North Carolina, more particularly described as follows, to-wit:

Being all of lot 76, Homestead Park Subdivision, Phase 2, Section A, as shown on map recorded in Book of Maps 1998, Page 1035, Wake County Registry, together with improvements located thereon. . The tax map or parcel ID No. is: 0246535

6. CitiMortgage, Inc. holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$135,000.00. This Deed of Trust was recorded on 3/23/05 in Book 11276 at Page 1942, Wake County Registry of Deeds.
7. GMAC Mortgage, LLC holds a second Deed of Trust on such property with a payoff balance, as of the

8. Beneficial Mortgage Co. of North Carolina holds a third Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$30,540.00. This Deed of Trust was recorded on 8/14/07 in Book 12703 at Page 2335, Wake County Registry of Deeds.
9. The fair market value of the said property is not greater than \$170,000.00.
10. Pursuant to 11 U.S.C. 506 of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with Beneficial Mortgage Co. of North Carolina, secured by a third Deed of Trust against the Plaintiffs' said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. 506(d), the lien securing said loan is void.

WHEREFORE, the Plaintiffs pray the Court find that said claim held by Beneficial Mortgage Co. of North Carolina, which is secured by a third Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiffs further pray that the Court order Beneficial Mortgage Co. of North Carolina to cancel the said Deed of Trust forthwith upon the completion of the Plaintiffs' Chapter 13 plan and the granting of the Plaintiffs' discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: March 16, 2009

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s John T. Orcutt
John T. Orcutt
Attorney for the Plaintiffs
North Carolina State Bar No.: 10212
6616-203 Six Forks Road
Raleigh, N.C. 27615
(919) 847-9750